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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,461	11/14/2003	Ted M. Zarubaiko	ITFT-PFC100US	2481

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RATNERPRESTIA  
P O BOX 980  
VALLEY FORGE, PA 19482-0980

EXAMINER

NICHOLSON, ERIC K

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/714,461

Applicant(s)

ZARUBAIKO, TED M.

Examiner

Eric K Nicholson

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11-14-03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

**Claim Rejections – 35 USC § 112**

Claims 4,5 and 15-20 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 4 and 5 “vertically offset” is undefined as the claims set forth no proper point of reference from which to construe what is horizontal and what is vertical. In claim 19 it is unclear what is meant by “a rolled position”. In claim 5 the phrase “at least as high as a level of fluid required for contact with a portion of the instrument” is indefinite as a structurally unsupported functional statement since the instrument location has not be claimed or defined.

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**Claim Rejections – 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 13-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. patent 4,708,372 to Arima et al..

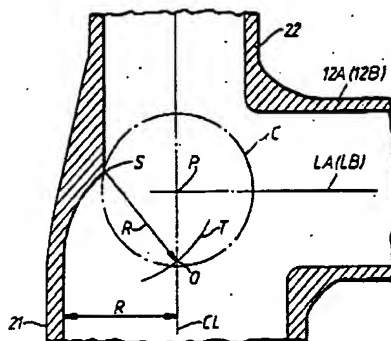


Fig. 9.

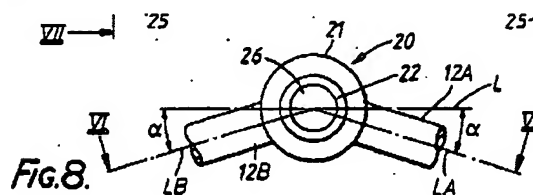
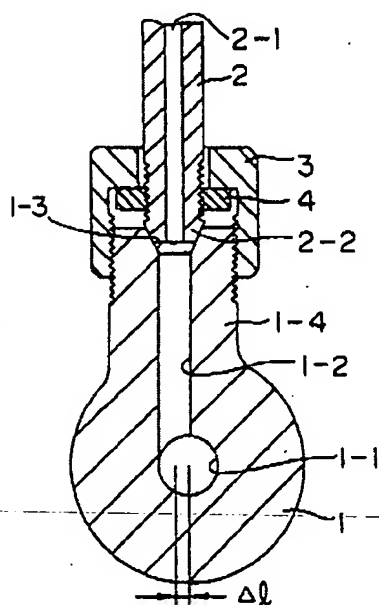


Fig. 8.

The Arima et al. coupling illustrates in fig. 9 a tee including a body member having at least one inlet and one outlet for providing a flow path through the body, and a concave surface that forms a cup in fluid communication with said flow path, at least one of the inlet or the outlet positioned offset relative to a central axis of the cup. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). As to claim 2, the lines 22 and 21 are

coaxial, As to claim 3, the cup axis is perpendicular to the flow path as shown. As to claims 13 and 14, see fig. 8 which illustrates diameters that are equal at 12b and 12a and diameters that are unequal at 12b and 21.

Claims 1-9 and 15-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. patent 5,992,904 to Hitachi et al.



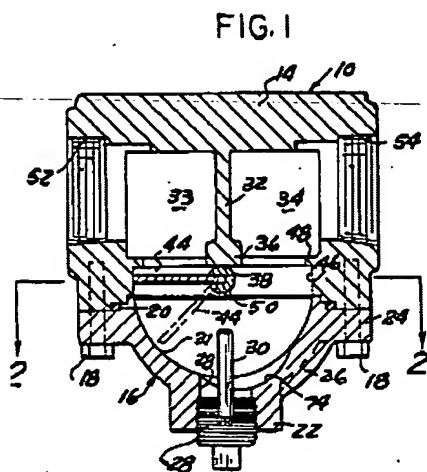
**FIG. 4**

The Hitachi et al. coupling illustrates in fig. 4 a tee including a body member having at least one inlet and one outlet for providing a flow path through the body, and a concave surface that forms a cup in fluid communication with said flow path, at least one of the inlet or the outlet positioned offset relative to a central axis of

the cup. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

*Ex parte Masham*, 2 USPQ2d 1647 (1987). As to claim 2, the lines 22 and 21 are coaxial, As to claim 3, the cup axis is perpendicular to the flow path as shown. As to claims 13 and 14, see fig. 1 which illustrates diameters that are equal at 5 and diameters that are unequal at 5 and 2. As to claims 6-9 see the line 1-2 shown tangential to the circular cross-section of the cup 1-1.

Claims 1-3,10-14 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. patent 3,282,102 to Rosaen.

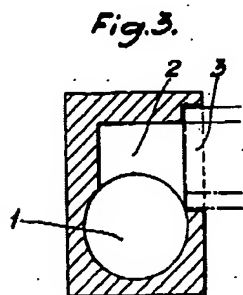


The Rosaen coupling illustrates in fig. 1 a tee including a body member having at least one inlet and one outlet for providing a flow path through the body, and a

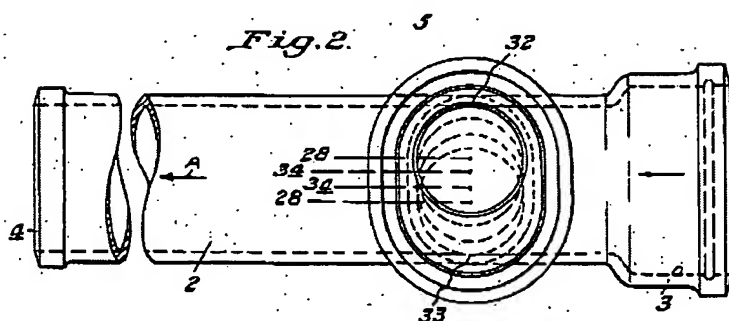
concave surface that forms a cup 74 in fluid communication with said flow path, at least one of the inlet or the outlet positioned offset relative to a central axis of the cup. As to claim 2, the lines 22 and 21 are coaxial, As to claim 3, the cup axis is perpendicular to the flow path as shown. As to claims 10 and 11 see the planar sides as shown in figs. 2 and 3. As to claim 12, such limitations are considered to be product-by-process limitations and it has been found that whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by whether the process by which it is made is patentable. In re Klug, 333 F2d 905, 142 U.S.P.Q. 161 (CCPA 1964). In an ex parte case, product-by-process claims are not construed as being limited to the product formed by the specific process recited. In re Hirao et al., 535 F2d 67, 190 U.S.P.Q. 15, see footnote 3 (CCPA 1976). As to claims 13 and 14, see fig. 1 which illustrates diameters that are equal at 52 and 54 and smaller than in diameter than the cup 31 and diameters.

### **Conclusion**

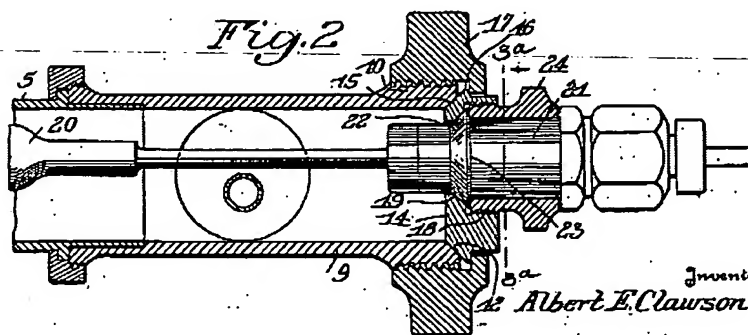
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the fig. 3 of U.S. patent 2,481,376



Also note fig. 1 of U.S. patent 2,065,524



Also note fig. 2 of U.S. patent 1,609,606.



Any inquiry concerning this communication or earlier communications from  
the examiner should be directed to Eric Nicholson whose telephone number is



(703) 308-0829. The examiner can normally be reached on Tuesdays thru Fridays from 7:30 to 6:00.

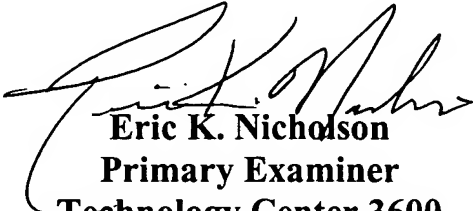
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for Technology Center 3600 is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center receptionist whose telephone number is (703) 308-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

ekn  
12/7/04

  
**Eric K. Nicholson**  
**Primary Examiner**  
**Technology Center 3600**